

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeene G. Kelly.

A'Lones Group, Inc.

Docket Nos. ER97-512-002
ER97-512-003
EL05-111-002

ORDER DENYING REQUEST FOR REHEARING AND DISMISSING UPDATED
MARKET POWER ANALYSIS

(Issued February 28, 2006)

1. In this order, we deny the rehearing request of A'Lones Group, Inc. (A'Lones) filed in response to the Commission's November 3, 2005 Order revoking A'Lones's authority to make sales at market-based rates.¹ We also dismiss A'Lones's updated market power analysis filed concurrently with its request for rehearing.

Background

2. In an order issued on May 31, 2005, the Commission announced its policy with respect to entities that failed to comply with the conditions under which the Commission granted them market-based rate authority, namely, the requirement to submit an updated market power analysis.² The Commission directed the captioned market-based rate sellers, including A'Lones, to file their updated market analyses within 60 days from the date of issuance of that order or provide satisfactory support for why they should not be required to do so. If an entity failed to file an updated market power analysis or provide satisfactory support for why it should not be required to do so within 60 days, its market-based rate authority would be revoked.

¹ *3E Technologies, Inc.*, 113 FERC ¶ 61,124 (2005) (November 3 Order).

² *3E Technologies, Inc.*, 111 FERC ¶ 61,295 (2005) (May 31 Order). The May 31 Order established a refund effective date of 60 days after publication of notice of the investigation in the *Federal Register*. The notice was published in the *Federal Register* on June 10, 2005, with a refund effective date of August 9, 2005.

3. In the November 3 Order, the Commission revoked the market-based rate authority of the companies that failed to comply with the May 31 Order and terminated their market-based rate tariffs. Because A'Lones made no filing in response to the May 31 Order, A'Lones's market-based rate authority was revoked and its market-based rate tariff was terminated effective November 3, 2005.

4. On December 2, 2005, A'Lones filed a request for rehearing of the November 3 Order. Concurrent with its request for rehearing, A'Lones also filed an updated market power analysis stating that it now recognizes that it was required to submit updated market power filings every three years. A'Lones claims it is filing this updated market power analysis to correct the violation that led to the revocation of its market-based rate authorization.

5. A'Lones acknowledges that it failed to submit an updated market power analysis as required. It asks the Commission to grant rehearing and allow it to retain its market-based rate authority based on a number of mitigating factors. A'Lones claims that its failure to file an updated market power analysis was the result of an administrative oversight and not the result of malicious intent. A'Lones states that, because of its small size and limited operations, it does not devote significant time or resources to power marketing operations or to monitoring developments in the electric industry, regulatory or otherwise. A'Lones states that it has made good faith efforts to comply with other Commission requirements applicable to sellers and has diligently filed its Electric Quarterly Reports.

Discussion

6. As the Commission stated in the May 31 Order, in the absence of an updated market power analysis, the Commission cannot exercise its statutory duty to ensure that market-based rates are just and reasonable and that market-based rate sellers continue to lack the potential to exercise market power so that market forces are in fact determining the price. We directed A'Lones to submit an updated market power analysis in the May 31 Order in order to execute this statutory duty. In the November 3 Order, we revoked A'Lones's market-based rate authority in light of A'Lones's failure to comply with the May 31 Order.

7. The arguments set forth in A'Lones's request for rehearing of the November 3 Order are not sufficient to justify granting rehearing. A'Lones's small size, limited operation, lack of malicious intent, efforts to remedy the violation, and lack of actual knowledge of the Commission's May 31 Order do not relieve it of the responsibility to

file an updated market power analysis as directed by the May 31 Order.³ We therefore will deny A'Lones's request for rehearing. The revocation of A'Lones's market-based rate authority is without prejudice to A'Lones making a new filing with the Commission under section 205 of the Federal Power Act to request market-based rate authority.⁴

8. Because A'Lones's market-based rate authorization was revoked and its market-based rate tariff terminated effective November 3, 2005, A'Lones's updated market power analysis is moot and we dismiss it as such.

The Commission orders:

(A) A'Lones's request for rehearing is hereby denied, as discussed in the body of this order.

(B) A'Lones's updated market power analysis is hereby dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

³ Rule 2010(k) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010(k) (2005), requires that any entity regulated by the Commission provide a person to receive service of documents pertaining to that entity. Rule 2010(k)(2) states that "[e]ach regulated entity has a continuing obligation to file with the Commission updated information concerning the corporate official or person designated to receive service." In addition, the Commission published notice of the May 31 Order in the *Federal Register* on June 10, 2005, 70 Fed. Reg. 33,888-89 (2005). *See* 18 C.F.R. § 385.2009 (2005). *See also* 44 U.S.C. § 1507 (2000) (Publication of an order in the *Federal Register* "is sufficient to give notice of the contents of the document to a person subject to or affected by it."); *Yakus v. United States*, 321 U.S. 414, 435 (1944) (citing 44 U.S.C. § 307, now codified as 44 U.S.C. § 1507).

⁴ 16 U.S.C. § 824d (2000).